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November 6, 2004

To: Examiner Luby
Art Unit 3611
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	104056,712	
	Filing Date	1/28/2002	
	First Named Inventor	Parana	
	Art Unit	3611	
	Examiner Name	Luby	
Total Number of Pages In This Submission	3	Attorney Docket Number	PERE100

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Date	11/6/2004	Reg. No. 33627

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Perena

PATENTS

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Serial No. 10/056,712

Group Art Unit: 3611

NOV 06 2004

Filed: 01/28/2002

Examiner: Luby

For: WALKING ASSISTANCE DEVICE

REQUEST FOR WITHDRAWAL OF REJECTION

The Office Action dated 11/03/2004 is considered to be improper in that there is no provision for such action in the M.P.E.P. or 37 CFR, and applicant requests withdrawal of this Office Action and passage of the application to issue.

Section 1.198 of Title 37 states:

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 41.50 of this title without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

There is no indication of record that the Director has given written authority for the reopening of prosecution for this application.

Section 1.114 is not pertinent to the present situation.

Section 41.50 describes the decisions and other actions which may be taken by the BAPI. This Section is divided into subsections (a)-(f).

Subsection (a) states that the BAPI may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. This is what occurred in the present case. This Subsection also states that the Board may also remand an application to the examiner. This did not happen.

Subsection (b) states that should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. While it appears from the record that the Board may have had knowledge of grounds not involved in the appeal for rejecting pending claims, the Board chose not to make a new ground of rejection as provided by this Subsection.

Subsection (c) gives the Board the right to include an explicit statement of how a claim on appeal may be amended to overcome a specific rejection. This did not happen.

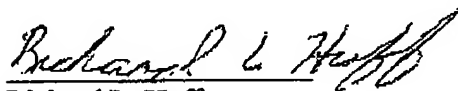
Subsection (d) gives the Board the right to order the appellant to additionally brief certain issues. This did not happen.

Subsection (e) discusses the effect of a remand by the Board. This Subsection does not apply to the current situation.

Subsection (f) discusses extension of time. This Subsection does not apply to the current situation.

Since the Examiner has reopened prosecution, since Sections 1.114 and 41.50 do not apply, and since there is no evidence that the Director has given written approval, it appears that the Examiner has acted contrary to authority in reopening prosecution. Accordingly, applicant respectfully requests that the Office Action dated 11/3/2004 be withdrawn and the claims indicated as allowable by the Board be passed to issue.

Respectfully Submitted,


Richard L. Huff
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